IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1031 OF 1983

M/s. Ramanand Ramprasad ...Plffs

vs.

National Screw and Wire

Products and Anr. ....Defnds

K. Modi i/b. Haridas and Co. for plffs.

Ms. S.S. Dwidevi i/b. P.N. Sadarangan for defendants.

CORAM: S.U. KAMDAR, J.

DATE : 7TH JUNE, 2005.

P.C. :

1. The present suit is filed for the recovery of sum of Rs.3,44,752.62/- as per the particulars of claim annexed as Exhibit-F to the

plaint with further interest on the principal amount of Rs.2,77,938.24p at the rate of 19.5% p.a. The plaintiffs are also seeking as against the defendant no.2 reimbursement of the amount paid to them towards storage and transportation charges of Rs.69,641,68/- alongwith interest totalling to Rs.86,711.03/-. Some of the material facts of the present case are as under :

2. The plaintiffs have entered into a finance arrangement with defendant no.1 which is a public limited company. Defendant no.1 is a company carrying on business at Calcutta and are manufacturer inter-alia of screw and other wire products. An agreement dated 15.11.1980 was arrived at for financial arrangement, being Exhibit-1 to the plaint. Under the said arrangement it was provided that the plaintiff will finance the defendant no.2 against the security of the goods and the said goods will be released against making payments and other charges including the transportation charges. The said finance arrangement was arrived at on the payment

of interest at the rate of 19.40%p.a. It is the case of the plaintiff that in the said arrangement the plaintiff paid to the defendant no.1 an aggregate amount of Rs.32,19,000/- for the purchase of the said goods being raw materials for him. The plaintiffs has taken delivery of the said goods from MMTC on behalf of defendant no.1 by making the aforesaid payment.

3. It is further the case of the plaintiffs that under the said terms and conditions the goods were required to be kept as security and to be released only on the defendant making payment towards the amount lent and advanced by the plaintiffs to the defendant no.1. This arrangement was carried on for some time. Thereafter it was found that inrespect of sum of the goods which was sought to be delivered by the plaintiffs as per the instructions of the defendant was not delivery of and consequently the plaintiff did not receive the amount which the plaintiffs were entitled to under the said finance arrangement. Infact the goods were

despatched by the plaintiff via the defendant no.2 on a condition that the said goods are to be delivered against the receipt of necessary payments inrespect of the said goods by the defendant no.2. The goods were not delivered by the defendant no.2 because the defendant no.1 did not make payment. The said goods were taken back by the plaintiff from the defendant no.2 after making payment of the storage and demurrage charges of sum of Rs.69,641.68/-. the said goods which were lying with the plaintiff and belonging to the defendant no.1 has been sold by the plaintiff and the statement of accounts has been filed at Exhibit-F to the plaint in which necessary credit has been given by the plaintiff on account of defendant no.1 towards the sale proceeds of the said goods which has been sold by the plaintiff on account of defendant no.1. It is the case of the plaintiff that at the foot of the account after giving credit for the sale proceeds of the said amount there has been an outstanding amount due and payable by the defendant no.1 to the plaintiff totalling to Rs.3,44,752.62/- which

includes interest upto the date 31.12.1981

4. The present suit has been filed by the plaintiff for the recovery of the aforesaid amount. The defendant no.1 has not filed any written statement though served with the writ of summons. The second defendant has filed his written statement and has resisted the claim towards the reimbursement of the amount of Rs.69,643.68/- as claimed by the plaintiff alongwith interest at the rate of 17.69%. The defendant no.1 has neither filed written statement nor his advocate is appearing on his behalf. In view thereof I pass the decree under order 8 rule 10 of the CPC for non-filing of the written statement against the defendant no.1 for the amount of Rs.3,44,752.62/- with further interest from date 31.12.1981 on the principal amount of Rs.2,77,938.24p at the rate of 18% p.a. from 31.12.1981 till payment and or realisation.

5. In so far as the claim against the defendant no.2 is concerned learned counsel has

relied upon a letter dated 27.3.1981 particularly clause-3 therein which reads as under :

> 3. Freight and all other expenses will be collected from M/s. National Screw and Wire Products Ltd, Calcutta."

6. It has been stated by the learned counsel for the plaintiff that he does not desire to lead any oral evidence for pressing the claim against defendant no.2 and he shall only rely upon admitted documents.

7. In so far as the claim against defendant no.2 is concerned the same depends upon the interpretation of the letter dated 27.3.1981. The said letter is an admitted document. It is his case that clause-3 of the said letter interalia provides that freight and other expenses is to be collected from M/s. National Screw and Wire Products Ltd which is the defendant no.1 and

in view thereof the defendant no.2 are not entitled to claim demurrage charges from the plaintiff being the sum of Rs.69,643.68/-. It is been further contended that the plaintiff made the payment of the aforesaid amount for the purpose of releasing the said goods since the defendant no.2 was claiming the lien inrespect thereof. Accordingly, the plaintiff paid the aforesaid amount and have filed the present suit for re-imbursement of the said amount. In my opinion the contention advanced by the learned counsel for the plaintiff has no merits firstly because the defendant no.2 is transporter and have the general lien inrespect of his claim of transportation charges. The defendant no.1 did not take delivery of the goods. Thus the question of recovering the said transportation charges from them did not arise. Since the plaintiff demanded return of goods due to non-delivery then the defendant no.2 has rightly claimed their charges towards the transportation and demurrage charges for storing of the said goods. Thus the defendant no.2 were right and justified in claiming lien on the said

goods and has rightly claimed the payment of Rs.6.643.68/- before releasing the said goods. Apart therefrom the contention of the learned counsel for the plaintiff is also required to be rejected because on plain and simple reading of clause 3 it only provides that freight and other expenses has to be collected from the defendant no.1. It is an admitted position that the defendant no.2 has not taken delivery of the said goods and therefore the question of claiming any freight and other expenses by defendant no.2 from defendant no.1 cannot and does not arise. In any event clause-3 cannot defeat the right of defendant no.2 as a transporter under the Carriage of Goods Act and the claim for demurrage for holding the goods for almost three months. If the plaintiffs seeks to take back the delivery of the said goods then the plaintiff is liable to make payment of necessary dues of the 2nd defendant. In view thereof the suit as against the defendant no.2 is dismissed. Suit as against defendant no.1 is decreed as aforesaid. The defendant no.1 to pay cost of the suit.

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